



March 10, 1999

Ms. Kit Cahill
Senior Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR99-0672

Dear Ms. Cahill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122634.

The San Antonio Water System received a request for a proposal for Records/Document Management Consulting. The company whose submitted the proposal, Antares Development Corporation ("Antares"), has informed you that "certain sections of the proposal are proprietary in nature." You ask whether you can withhold these sections of the proposal from disclosure.

Since the property rights of Antares may be implicated by the release of the proposal, we notified Antares about the request for its proposal. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Antares responded by claiming that two sections of its proposal constitute trade secrets: the Optional Demonstration Laboratory description on p. 20, and Appendix D, entitled "Electronic Document Management Systems: A Project Manager's Guide."

Section 552.110 of the Government Code protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or

judicial decision. The Texas Supreme Court has adopted the definition of “trade secret” from the Restatement of Torts, section 757, which holds a “trade secret” to be

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). If a governmental body takes no position with regard to the application of the “trade secrets” branch of section 552.110 to requested information, we accept a private person’s claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5 (1990).¹

Having considered Antares’ arguments against disclosure, we find that Antares has established, by a *prima facie* case, that the Optional Demonstration Laboratory description on p. 20, and Appendix D, entitled “Electronic Document Management Systems: A Project Manager’s Guide,” are trade secrets. Therefore, you must withhold these sections of the proposal from disclosure under section 552.110. You must release the remaining portions of the proposal to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: “(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and other involved in [the company’s] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 122634

Enclosures: Submitted documents

cc: Mr. W. Lang Glotfelty
RCI Technologies, Inc.
10826 Gulfdale
San Antonio, Texas 78216-3607
(w/o enclosures)

Mr. Gene Rodriguez, Project Manager
Antares Development Corporation
401 South Frio Street
San Antonio, Texas 78207
(w/o enclosures)